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Supreme Court, U.S.
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CASE NO. 94 - 1872

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

DAVID H. DEIBLER and CARRIE J. DEIBLER,

PETITIONERS

vs.

ATLANTIC PROPERTIES GROUP, INC., and
THE DINNER BELL INN, INC.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF DELAWARE

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

DAVID H. DEIBLER, Pro Se
1115 Wheatland Avenue
Apartment G-6
Lancaster PA 17603
Telephone (717) 396-0719

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

ATLANTIC PROPERTIES GROUP, INC., a corporation of the State of Delaware and THE OLDE DINNER BELL INN, INC., a corporation of the State of Delaware,	*	C.A.No.93M-11-001
Plaintiffs,	*	
v.	*	
DAVID H. DEIBLER and CARRIE J. DEIBLER,	*	
Defendants.	*	

DECISION AFTER HEARING

Dates of Hearing: December 30, 1993 and January 4, 1994

Date of Oral Decision: January 5, 1994

Date of Written Decision: January 6, 1994

George F. Gardner, III, Esquire, Parkowski, Noble & Guerke, P.A., P.O. Box

598, Dover, Delaware 19903, attorney for plaintiffs.

Henry A. Heiman, Esquire, Heiman, Aber & Goldlust, P.O. Box 1675, Wilmington, Del. 19899, attorney for defendants.

GRAVES, Judge

Posture

On November 2, 1993, Atlantic Properties Group, Inc. ("Atlantic") and The Olde Dinner Bell Inn, Inc. ("Dinner Bell") filed a complaint and petition for rule to show cause against David H. Deibler and Carrie J. Deibler ("Deiblers"). The rule to show cause seeks a writ of possession arising from Atlantic's purchase of Deiblers' stock in Dinner Bell. More specifically, the writ

of possession concerns real property Dinner Bell owned. At issue is a sheriff's sale on July 30, 1993 of the Dinner Bell stock and stock in Coastal Resorts Properties, Inc., stock which the Deiblers also owned. On November 3, 1993, the Rule to Show Cause was granted and December 2, 1993 was the date set for the hearing on the application. The matter subsequently was continued to December 30, 1993. Following a full day of testimony, the case was continued to January 4, 1994. Because another sale involving the litigants is scheduled for January 6, 1994 and because that sale is dependent on this Court's ruling, the parties seek an expedited ruling. The Court orally ruled on January 5, 1994 that it confirmed the sale on July 30,

1993. This is the Court's written ruling as to the issues presented.

A Brief History

Mr. and Mrs. Deibler own or have owned several properties in the Rehoboth Beach and Dewey Beach area for many years. The changes in economic conditions over the past several years have been unkind to the Deiblers, resulting in their loss of properties by way of mortgage foreclosure or sheriff's sales by judgment holders.

The Deiblers have fought hard to retain their properties but sometimes, they have crossed the line of legally acceptable conduct.

The Deiblers sought bankruptcy protection but eventually were dismissed from bankruptcy court and ordered not to

file a bankruptcy petition for a period of six months.

On November 25, 1992, Prickett, Jones, Elliott, Kristol & Schnee ("Prickett, Jones") entered judgments against the Deiblers in the principal sum of $121,250.08. Prickett, Jones previously had represented the Deiblers, and the judgment was for services rendered. The Deiblers attacked the judgment, but this Court upheld it.

The Deiblers would not comply with post-judgment discovery requests until the morning of a contempt hearing. The Deiblers then revealed their shareholder interests in Dinner Bell, Coastal Properties, Inc. ("Coastal") and Distant Horizons Dream, Inc. ("Distant Horizon"). On July 2, 1993, this Court entered an order for the sale of the Deiblers' stock

in Distant Horizon (100 shares), Dinner Bell (500 shares), and Coastal (10 shares).

On July 2nd, the Court also entertained argument from the Deiblers for advertising beyond what is required by statute. The Deiblers sought an order requiring four weeks of advertising in The Washington Post, the Coast Press, The Whale, and The News Journal. The Court, on July 2, 1993, set July 30, 1993 as the sale date in order to allow for more time for advertising than the 10 days which 10 *Del.C.* §4972 requires. The Court specifically advised the Deiblers if they wanted any further advertising beyond the statutory requirements, then they were free to do so. The Sheriff posted the following sale bill:

SHERIFF'S

SALE

By virtue of a Fi Fa to Levy and Sell, to sell all goods and chattels, to me directed, will be exposed for Public Sale on:

FRIDAY, JULY 30, 1993

AT 1:00 O'CLOCK P.M. (D.S.T.)

In front of the Courthouse, Georgetown, Georgetown Hundred, Sussex County, State of Delaware, the following described goods and chattels, to wit:

100 Shares of Stock - Distant Horizon Dream, Inc.

500 Shares of Stock - The Olde Dinner Bell Inn, Inc.

10 Shares of Stock - Coastal Resort Properties,

OR AS MUCH IS REQUIRED TO SATISFY WRIT

TERMS: Cash or Certified Check on day of sale.

Seized and taken in execution as the property of David H. Deibler and Carrie J. Deibler, and will be sold by

WILLIAM L. JONES, SHERIFF

Sheriff's Office, Georgetown, DE

While the Deiblers desired an increase in advertising as to time and newspaper coverage, they made no complaint as to the "quality" of the contents of the sale notice until after the sale. No evidence was presented that the Deiblers themselves advertised the property for sale.

Between July 27, 1993 and July 29, 1993, the Deiblers filed Certificates of Dissolution with the Secretary of State

for Distant Horizon and Dinner Bell and then executed and recorded deeds purporting to transfer to themselves real property held by Dinner Bell and Coastal.[1] The Deiblers gave no consideration to the corporations. Their actions were a final attempt to thwart the legal process which exposed their interest in the corporations to sheriff's sale.

Prickett, Jones sought immediate relief. By way of teleconferences, the Court communicated its shock as to the Deiblers' conduct. The Court was left with the impression that the aforementioned actions would be reversed

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[1] Apparently, in their haste, the Deiblers dissolved Distance Horizon instead of Coastal. Distant Horizon had no assets.

and the sale would go forward. James Tyler, Esquire and Michael McGroerty, Esquire were the attorneys with whom the Court communicated, as they were either representing the Deiblers or had participated in the legal paperwork concerning the aforementioned dissolutions and deeds.[2]

On July 30, 1993, the sale proceeded, but the Deiblers made the decision not to reverse the dissolutions and not to convey the real property back to the respective corporations. This was announced at the sale.

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[2] The evidence established that neither attorney advised Mr. Deibler as to the aforementioned conduct and that Mr. McGroerty was not aware of the pending sheriff's sale when he prepared the documents.

It should be noted that Atlantic was formed as a wholly-owned subsidiary of Guardian Capital Corporation ("Guardian"), a judgment creditor of the Deiblers and Dinner Bell. Atlantic apparently was created as a separate entity to bid upon the Deiblers' stock. Guardian was interested in bidding on the aforementioned stock, but was leery of unknown or contingent liabilities. Therefore, Atlantic was created. Guardian also had attached the Deiblers' stock, but this came after the Prickett, Jones attachment so that Guardian's attachment was junior to that of Prickett, Jones.

Atlantic/Guardian and Prickett, Jones agreed that in the event Prickett, Jones was successful in obtaining the stock of the Dinner Bell or causing the

stock to be sold at auction and providing Atlantic the opportunity to purchase the stock, then Atlantic would pay up to $100,000 for the stock. Atlantic was not interested in paying over $100,000 for the stock but would guarantee Prickett, Jones $100,000 minus any credits from any bidder if Prickett, Jones was successful in exposing the stock property to public sale. Time was important as the six months in which the Deiblers were effectively barred from filing bankruptcy was nearly at end.

At the sale, Atlantic successfully bid $12,000 for the Deiblers' Coastal stock and $5,000 for the Deiblers' Dinner Bell stock. No bid was made for the Distant Horizon stock. A total of $17,000 was bid and to be applied against

the Prickett, Jones' judgment of $172,000 against the Deiblers.

Immediately after the sale, Atlantic and the Deiblers reached an agreement which would have resolved all the issues concerning the stock sale. As part of the same, the Deiblers paid $22,000 into an escrow account as a condition of good faith performance. The Deiblers then stopped payment on the check.

After the sale, Guardian consummated its agreement with Prickett, Jones whereby Guardian would pay over to Prickett, Jones $83,000, the difference between $17,000.00, which Atlantic paid at the sale for the stock, and the $100,000.00 Guardian offered for the stock by way of either bidding or purchasing from Prickett, Jones.

On December 30, 1993 and January 4, 1994, the parties were given the opportunity to present evidence to support their respective positions as to the validity of the sheriff's sale which took place on July 30, 1993 and confirmation of same as well as to present oral argument. The Court requested and received memoranda from the parties on December 28, 1993.

Appraisal Testimony - Dinner Bell

The parties are worlds apart as to their respective positions on the value of the real property owned by the corporations and the value of the corporate stock.

The Deiblers presented John J. Mattey, an expert in valuing real estate and businesses.

Mr. Mattey testified that an appraisal can be conducted using any of the following methods or a combination thereof:

1. Costs
2. Income
3. Market Data (sales comparison)

He used the market data and costs approach. He determined that the income approach was not reasonable in spite of having appraised the property two years earlier on an income approach.

In the costs of approach to valuation, an appraiser first must place a value on the unimproved land and then determine replacement costs minus depreciation. To determine the value of the unimproved land, market comparables necessarily are used. Mr. Mattey found the value of unimproved R-1 and C-3

property Dinner Bell owned to be $2,323,000. After considering the cost and depreciating factors for the improvements, as well as personalty, good will and the liquor license, he valued the Dinner Bell property at $3,178,000.

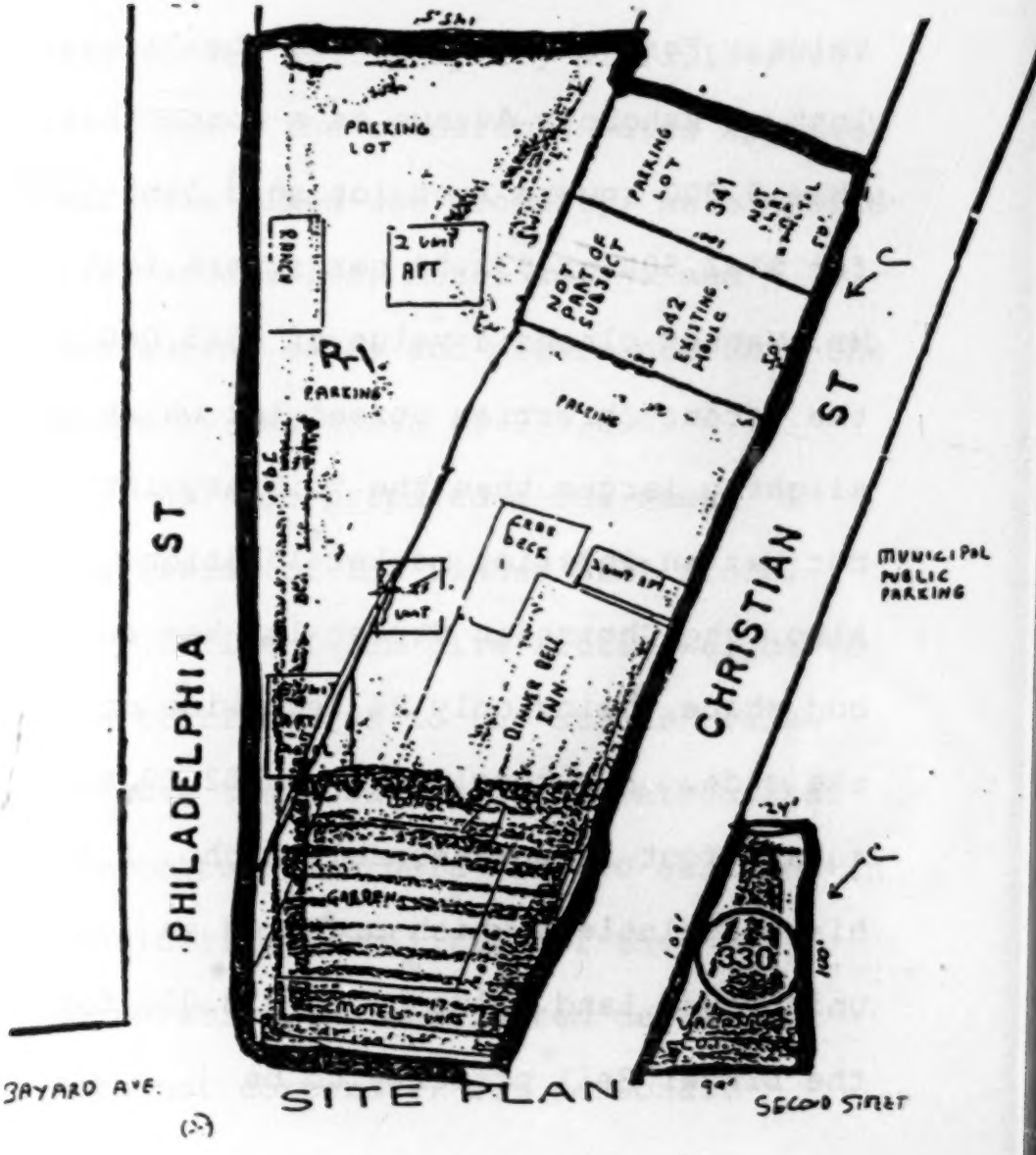
Using the comparable sales approach for this mixed-use property, he compared residence sales, motel sales, and restaurant sales and determined that the property was worth $2,970,000.

He also prepared a one sheet evaluation of the Dinner Bell stock.

I find I can give little weight to his testimony as to the stocks' value because there was no confirmation that the corporation held $50,000 cash and in considering liabilities of the corporation, he considered debts that were not corporate, but personal.

Overall, I cannot accept Mr. Mattey's opinion as to the fair market value of this property. It is my finding that his analysis produces a value that is substantially higher than fair market value. For example, he uses the "library lot" on Rehoboth Avenue as a comparable. This 5,000 square foot lot sold last year for $162,500 or $32.50 per square foot. Mr. Mattey places a value of $345,000 on the vacant Christian Street lot which is slightly larger than the "library lot" but has an inferior market location. Also, the Christian Street lot has an odd shape, being only 24 feet wide on one side. His conclusion of $52.00 a square foot is unreasonably high. I find his calculations which produced an unimproved land value of $2,323,000 for the Dinner Bell property to be

unrealistic for a parcel this size (see below) with its partial R-1 conditional use zoning and its location on the third block from the beach.



SITE PLAN

I find his comparable adjustments also place too much emphasis on the potential of the property. The Court must consider that any potential bidder is going to look at the property from the point of view of income: What is going to be the return on investment and will the cash flow produce an economically favorable result? Even Mr. Mattey acknowledges the income track record of the property is inconsistent with his appraisal.

Finally, I note that Mr. Mattey testified he did not use the income approach because of the poor physical condition which would require an expenditure of capital to renovate the property, but he was unable to quantify this further investment. His market value valuation of $2,970,000 means a

willing buyer would pay this amount for the property and then again have to make unknown expenditures for renovations. In summary, I find this valuation to be unreasonably high.

McGinnis on the Dinner Bell

Atlantic's expert was Philip McGinnis. Mr. McGinnis considered all three valuation methods: market comparison, cost, and income.

As to cost, he also had to reach a value as to the land itself. Using comparables, he established a fair market value of $10.00 a square foot for the land for a total of $637,000. The cost of improvements thereon minus depreciation is $859,000. The total cost valuation is $1,496,000. If find the use of $10.00 per square foot to be low in view of the library property being $32.00

per square foot. It is low even considering he uses the $10.00 per square foot for the entire property, including the R-1 property. I recognize larger parcels bring less per square foot than smaller parcels, but his figures produce a substantial shrinkage.

Using the market sales approach, Mr. McGinnis found the property to be worth $1,486,000. it is my finding that the restaurants used as comparables are sufficiently dissimilar to the Dinner Bell so as to lower the valuation of the restaurant.

Mr. McGinnis is of the opinion that the income approach is the most reasonable because of problems with adjusting comparables and because any prospective buyer will consider it for

only one purpose - its ability to generate income.

He analyzed the motel income, apartment income, residence income and restaurant income separately and reached a combined income valuation price of $1,686,000. I find his analysis of the rental properties to be reasonable. Mr. Mattey is of the position that if Mr. McGinnis' income approach is used, the square footage of the restaurant should be increased to consider the potential uses of other parts of the building.

It is my conclusion that the fair market value is best evidenced by the income approach, an approach that the Deiblers' expert chose not to present. Further, I find the square footage Mr. McGinnis used to be reasonable since it is typical of how the restaurant is being

operated. I adjust his valuation upward because the vacant Christian Street lot produces no income. In view of the municipal parking lot being across the street and the parking available on the R-1 portion of the property, I believe it unreasonable not to consider the separate value of this property for something other than a parking lot. I place a value of $150,000 on this lot considering that its location is inferior as compared to the library lot and its odd shape offsets its superior size. In summary, I find the fair market value of the Dinner Bell to be $1,686,000 plus $150,000 for a total of $1,836,000. Any purchaser takes subject to the Wilmington Trust Company lien, which I find to be $123,037, and the Guardian lien, which is $736,087, for a total of $859,124 in liens.

The Coastal Resorts' Appraisal

Coastal Resorts owns property at 5 Maryland Avenue and 7 Maryland Avenue in Rehoboth. Both Mr. McGinnis and Robert Kaufmann, the Deiblers' expert appraiser, testified as to the value of these properties.

As to 5 Maryland Avenue, I find that Mr. Kaufmann's appraisal is more reflective of this beach block property. He testified that this property is in need of renovation or should be demolished and a new residence built. In view of this, I accept his valuation of $250,000.

The 7 Maryland Avenue property consists of four condominiums and a separate building at the rear of the property. The condominiums have recently been renovated and each have three

bedrooms and one and one-half baths. These units are also in the beach block. Two of Mr. Kaufmann's comparables were townhouses, which I believe inflates his estimate above the fair market value. Two of Mr. McGinnis' estimates were high rise condominiums which, while closer to the boardwalk, also have the inconvenience of being on the fifth floor. Considering the testimony of each appraiser, I find the fair market value of each of the four units to be $155,000, including furnishings.

The garage apartment has been another legal problem for the Deiblers. They believe the first floor of the garage unit can be converted to additional living space. The City of Rehoboth disagrees and takes the position that it is a garage/apartment, meaning

there must be a garage on the first floor and living space is restricting to the living space above the garage. Even if the City prevails, the second floor apartment has approximately 400 square feet of space. The photographs show a property that has a high rental potential, especially in view of its close location to the beach. I find Mr. McGinnis' $38,000 appraisal of fair market value to be very low. I find Mr. Kaufmann's appraisal of the second floor living area to be more reasonable, and I set a fair market value of $80,000. I have not considered the first floor to have living space as that is an unknown and there will be legal expense in any battle with the City of Rehoboth.

In summary, the fair market value of the real property of Coastal Resort is

$250,000 for 5 Maryland Avenue; $620,000 for the condominiums at 7 Maryland Avenue and $80,000 for the garage unit for a total of $950,000. The liens to Resolution Trust Corporation on these properties total $425,777.

Legal Issues

I. Inadequacy of Sale Price of Personal Property - The Stock.

It is undisputed that the stocks are that of closely held corporations. They have no easily determinable fair market value. They constitute personal property, but are intangible and not readily subject to inspection. Even between a willing buyer and a willing seller, the sale of stock of a closely held corporation requires studious inquiry by the buyer into the assets, liabilities and income potential. Also,

there is always concern on a buyer's part of unknown or contingent liability. Because of this, most sales involving closely held corporations are structured so that it is the assets of the corporation that are sold, not the stock, thereby giving the buyer an added degree of protection.

In the present case we have the worst case scenario for the sale of closely held stock - a forced sale.

Neither the parties nor the Court have been able to locate any law on the adequacy or inadequacy of the sale price of stock or more particularly, stock in a closely held corporation, when exposed to a forced sale. The fact that this is a forced sale is a critical factor the Court must consider. The Deiblers ask the Court to liken the sale of the

closely held stock to a sale of the assets of a corporation, citing *Capozzi v. Antonoplos*, Pa. Supr., 201 A.2d 420 (1964). Since the assets of the corporation are predominantly real property, both parties argue that the Court should apply the 50% of fair market value test which is generally applicable in Delaware in determining the adequacy of the price in a sheriff's sale of real property. *Girard Trust Bank v. Castle Apartments, Inc.*, Del. Super., 379 A.2d 1144 (1977); *Home Beneficial Life Insurance Co. v. Blue Rock Shopping Center*, Del. Super., 379 A.2d 1147 (1977).

Atlantic, in arguing the application of the case law concerning forced sales of real property to the present case, notes that the traditional 50% minimum of

fair market value is not inflexible. In both *Girard Trust Bank v. Castle Apartments, Inc., supra* and *Home Beneficial Life Insurance Company v. Blue Rock Shopping Center, Inc., supra,* Judge Taylor noted that the pool of potential bidders diminishes when the price increases or when the uniqueness of the property limits its use. The bottom line is that the Court should consider the particular nature of the property being sold and the potential market for same in exercising its discretion in determining the adequacy of a bid at a forced sale. I now review the facts involved in this case.

1) A waiver by a judgment creditor's deficiency judgment rights should be considered. *Girard Trust Bank v. Castle Apartments, Inc., supra.* In

this case, Prickett, Jones has accepted $17,000 by way of the sale process and $83,000 from its agreement with Guardian. The Deiblers have been credited $100,000 toward the personal judgment against them in the amount of $172,000.

2) Any purchaser of the stock in either corporation would have to consider not only the assets of the corporation would have to consider not only the assets of the corporation but the liabilities. Each corporation has substantial mortgage liens and judgment liens. The existing mortgage and judgment liens on the Dinner Bell property total approximately $859,124. On Coastal, the liens are approximately $425,777. The Court should consider these liens. *Briehler v. Poseidon Venture, Inc.*, R.I. Supr., 502 A.2d 821

(1986). Of the $859,124 on the Dinner Bell, $736,087 is the Guardian lien. That lien is also a personal lien against the Deiblers. If the sale is affirmed, Guardian has represented to the Court it will only pursue collection of the $736,087 from the Dinner Bell assets, thereby effectively releasing the Deiblers from the personal judgment.

3) It is apparent that neither corporation has sufficient cash flow to service their respective indebtedness. The survival of the corporations would require a prospective bidder to consider not only the indebtedness but also to consider a substantial infusion of additional capital to keep the companies afloat.

4) The zoning of the Dinner Bell properties is a factor in

determining the uniqueness of the property because the residential property provides parking for not only the rental properties located on the R-1 land but also parking for the commercial property. This is accomplished by way of a non-conforming use. This results in a higher value for both the commercial property and R-1 properties as they are used in conjunction with each other. The drawback is that if divided, the property would be worth less than the whole.

5) I find that the Deiblers have not established that there would be a higher bid if a second sale should be scheduled. *Girard Trust Bank v. Castle Apartments, supra.* The only evidence presented was by way of cross-examination of Mr. Hirsch, the representative of Guardian. He acknowledged that on

September 1, 1993, a month after the sale, an individual called him and offered to buy the Dinner Bell for $400,000, subject to the first mortgage, if Guardian would accept $400,000 as payment in full on its $736,087 deficiency judgment. This was not acceptable to Guardian. I do not find Guardian's business decision t be unreasonable nor do I find that this testimony establishes that this third party would bid at any future sale.

6) There are no warranties provided a potential bidder, especially as to contingent or unknown liabilities. Bidding with the potential of purchasing unknown or contingent liabilities is a unique factor the Court must consider.

In considering the adequacy of the bids for the respective corporations, the

Deiblers argue that the Court should focus on equity (assets minus liabilities) whereas Guardian argues the Court should focus on the entire financial picture, that being that the successful bidder takes subject to the liabilities and when the liabilities and the bid are taken together, the price is adequate.

The valuation methodology in Chancery Court usually considers an equity approach; that is, following a sale, what will be the shareholders' interest. In Chancery Court, the review is to determine if shareholders have been treated fairly in the context of a business decision. In the present case, the Court must examine the consequences of a forced sale created by the shareholders' individual financial

situation. My analysis is more a substantive due process test as opposed to the test of what is best for the corporations and shareholders.

If the sale is confirmed, the Deiblers have received a $100,000 credit against the Prickett, Jones debt, a release of the $736,087 owed by them personally as well as Atlantic/Guardian taking the property subject to the remaining liens, which are substantial. The Wilmington Trust obligation is $123,037. The Resolution Trust Corporation obligation is $425,777.

Even in the application of the sale of real property, the 50% rule recognizes that up to 50% and perhaps more of the equity or value of the property may be lost in a forced sale. it is unfortunate that individuals suffer financial

setbacks, but it is a fact that the Court cannot change. I conclude that the Court should examine the entire financial picture, including the liabilities, and not merely the potential equity involved.

I find the $5,000 bid for the Dinner Bell stock, when considered with the $859,124 debt, to be adequate. I find the bid of $12,000 for the Coastal stock, which is subject to the $425,777, to be adequate.

While my analysis confirms a result which is less than the 50% rule, I have noted the special circumstances which exist in these sales.

II. Sufficiency of Contents of the Sale Bill

The sale bill stated that the following goods and chattels would be sold: 100 shares of stock in Distant

Horizon, 500 shares of stock in Dinner Bell and 10 shares of stock in Coastal. The Deiblers complain that although this is technically all that is required, there has been a violation of substantive due process. The Deiblers argue that a prospective bidder has no means of determining whether what is being sold is 100% of the outstanding stock of the corporation or a minority interest. The Deiblers also argue that because the asset is intangible, there is no opportunity to "kick the tires" and visually inspect, as may be available at the sale of most personalty.

The sale of stock, especially closely held stock, is unique, but it is to be conducted in the same manner as other personalty. 8 *Del.C.* §324 (a) and (d).

A prospective purchaser of this property might have had more difficulty in obtaining information than in the situation of the sale of real property, but the means were available to obtain a reasonable amount of information. Any prospective bidder could have researched the Recorder of Deeds' records for any land owned by the corporations, any liens thereon, and to determine if any U.C.C. Article 9 filings exist. Additionally, this Court's files reveal a wealth of information concerning the corporations and the litigants. The files also provide names, addresses and phone numbers of attorneys who represent the Deiblers and who could be sources of information. Finally, the sale bill and the files provide the names of the

Deiblers, who would be a source of information.

In short, a reasonable bidder may have to do more work due to the uniqueness of the property being sold, but that should not translate to the Court becoming involved in requiring additional information in the Bill of Sale. It would also invite the subjective problem of determining what is "enough" in each case. Neither the Court nor the sheriff should become involved in descriptions involving the "quality" of the property sold. I note that the real problem that exists in the sale of closely held corporate stock is that no matter how much research one does, the bidder never will be assured that there are not unknown or contingent liabilities also being purchased.

The Deiblers presented no evidence that the description of the property deterred or confused any prospective bidders.[3] Also, I cannot overlook the fact that the Court gave the Deiblers additional time to advertising the sale in a manner they thought appropriate. They chose not to do so.

In light of the foregoing and the Court's earlier analysis and conclusions concerning the adequacy of the price, I conclude that the contents of the sale notice were sufficient.

III. The Agreement Between Prickett, Jones and Guardian

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[3] *Greater Pittsburgh Business Development Corporation v. Braunstein,* Pa. Super., 568 A.2d 1261, 1264 (1990).

There is no evidence that the agreement between two of the lienholders, Prickett, Jones and Guardian, is somehow suspect. It is an agreement between two interested parties attempting to secure a means of collecting on their judgments. There is no evidence that their agreement was intended to or did chill the bidding process. Such agreements are valid unless it is found the parties intended to depress the price of the property being sold or to suppress competitive bidding. *Jones v. Clary*, Va. Supr. Ct. App., 75 S.E.2d 504 (1953).

Finally, I note that the agreement actually benefited the Deiblers in that it provided a guarantee of $100,000 credit for the Deiblers as to Prickett, Jones while still permitting Prickett,

Jones or any other party to bid in excess of $100,000.

IV. The Deiblers' Conduct

Regardless of the particular problems present in this case due to the nature of the property being sold (closely held stock), it was the conduct of the Deiblers that created any potential chill on the bidding process. They chose to dissolve the corporations knowing that the stock had been *in custodia legis* since the levy by the Sheriff. The Deiblers chose to execute the deeds, removing the assets from the corporation. Their goal was to wreck the sale in order to buy time. They cannot benefit from their own misconduct.

It is provided in §8 of Annotation, *Estoppel of or Waiver by Parties or Participants Regarding Irregularities or*

Defects in Execution or Judicial Sale, 2 A.L.R. 2d 6, 42 (1948):

§8. Imprudent or obstructive conduct at sale.

> One proposition which seems to have taken definite form as a principle is that if a judgment debtor shall so conduct himself with respect to an execution sale of his property creating conditions unfavorable for a public sale, without any notice or factual basis reasonably calculated to register legitimate rights, he shall be precluded from later objecting to the sale for that reason, absent equitable grounds for independent relief.

. . .

> Judgment debtors who by their own conduct and assertions at an execution sale of land are shown thereby to cause an alleged inadequacy of the price for which it is sold, are not in a position to later assert the invalidity of the sale upon that ground, especially where it appears that the land is encumbered for more than its actual value. *Teague v. Burk*, (1929, Tex. Civ. App.) 18 S.W.2d 690.

While I may understand why the Deiblers acted as they did, the Court will not undo their own mischief, and they must live by the consequences of

their own acts, especially in light of the clear warnings which the Court gave and which they chose to ignore. The Court had considered contempt proceedings, but in light of the Court's decision upholding the sale, the Court will not pursue any contempt sanctions.

For all the reasons stated herein, the Court confirms the sale on July 30, 1993 of 10 shares of Coastal and 500 shares of Dinner Bell to Atlantic, and an order granting a writ of possession will follow.

IT IS SO ORDERED.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

ATLANTIC PROPERTIES GROUP, INC., a corporation of the State of Delaware and THE OLDE DINNER BELL INN, INC., a corporation of the State of Delaware,	*	C.A.No.93M-11-001
Plaintiffs,	*	
v.	*	
DAVID H. DEIBLER and CARRIE J. DEIBLER,	*	
Defendants.	*	

ORDER GRANTING WRIT OF POSSESSION

AND NOW TO-WIT, this 7th day of January, A.D., 1994, the Court having considered and granted the application of Plaintiffs The Olde Dinner Bell Inn, Inc. and Atlantic Properties Group, Inc. a Rule to Show Cause for a Writ of

Possession to be issued against the Defendants, David H. Deibler and Carrie J. Deibler for those lands and premises more particularly described in Exhibit "A" and depicted on Exhibit "B" in the Petition, being the same lands and premises described in a deed from David H. Deibler, Trustee under Chancery Court Order by deed dated March 27, 1981, and recorded in Deed Book 1063, Page 161 granted and conveyed to The Olde Dinner Bell Inn, Inc., a Delaware corporation, and the Court having held the required hearing on said Rule, Defendants having received appropriate notice of said hearing, and it further appearing that Plaintiffs, The Olde Dinner Bell Inn, Inc. and Atlantic Properties Group, Inc., as their interests appear, are entitled to the said Writ of Possession, pursuant

BEST AVAIL

to 10 *Del. C.* Subchapter 7, §5011, *et seq.*,

IT IS HEREBY ORDERED:

1. Said Rule for Writ of Possession is made absolute.

2. Said Writ of Possession is hereby granted in favor of Plaintiffs, The Olde Dinner Bell Inn, Inc., and Atlantic Properties Group, Inc. as their interests appear, and against Defendants, David H. Deibler and Carrie J. Deibler, and their employees and agents as to the lands described in Exhibit "A" and depicted on Exhibit "B" in the Petition, being the same lands and premises conveyed to The Olde Dinner Bell Inn, Inc. in Deed Record Book 1063, Page 161, *et seq.*

3. The Court further orders Defendants, David H. Deibler and Carrie

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J. Deibler to leave on the premises for which this Writ of Possession is being issued all personal property which is the property of The Olde Dinner Bell Inn, Inc.

4. This Writ is being executed as of the date hereinabove indicated and shall be and is effective in accordance with its terms and conditions as of the date hereinabove written.

5. Plaintiffs are hereby awarded the costs of this action.

/s/ T. H. GRAVES

Judge